

Amendments to the Drawings:

The attached replacement drawing sheet makes changes to Fig. 4 and replaces the original sheet with Figs. 4, 8 and 9.

Attachment: Replacement Sheet

REMARKS

Claims 1-46 are pending in this application. By this Amendment, the drawings and specification are amended. Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

Applicant appreciates the courtesies shown to Applicant's representative by Examiners Boeckmann and Nguyen in the April 9, 2008 personal interview. Applicant's separate record of the substance of the interview is incorporated into the following remarks.

Applicant appreciates the indication of allowability regarding claims 8, 18, 35 and 39. These claims are indicated as allowable if rewritten into independent form to include all of the features of the base claims and any intervening claims. The remaining claims are also allowable for at least the following reasons.

The Office Action objects to the drawings. Without conceding the propriety of the objection, Fig. 4 is amended to include an exemplary depiction of a mirror 35, in addition to the previously depicted mirror 60 shown in Fig. 1. Withdrawal of the objection of the drawings is respectfully requested.

The Office Action rejects claims 1, 2, 5-7, 9-17, 19, 43 and 44 under 35 U.S.C. §103(a) over DE 3517122 to Schillig in view of U.S. Patent No. 4,272,768 to Rookard Jr. (hereinafter "Rookard"); rejects claims 3 and 4 under 35 U.S.C. §103(a) over Schillig in view of Rookard and U.S. Patent No. 4,306,685 to Coffe; rejects claim 20 under 35 U.S.C. §103(a) over Shillig in view of U.S. Patent No. 1,603,612 to Krautzberger; rejects claim 20 under 35 U.S.C. §103(a) over Krautzberger in view of Shillig; and rejects claims 21-34, 36-38, 40-42, 45 and 46 over 35 U.S.C. §103(a) over Krautzberger in view of U.S. Patent Application Publication No. 2003/0108487 to Bara. These rejections are respectfully traversed.

The Office Action asserts that Schillig and Rookard would have reasonably suggested the features of claim 1. This assertion is incorrect.

The subject matter of claim 1 would not have been obvious over the combination of applied references that (1) are non-analogous art, (2) are not combinable in the manner suggested, and (3) cannot reasonably be considered to have suggested all of the positively recited claim features.

The Office Action concedes that Schillig fails to teach a reservoir comprising a first partition; and first and second compartments capable of containing the substance, the compartments being arranged to feed the spray mechanism with the substance and being disposed on either side of said first partition. The Office Action relies on Rookard, Jr. to remedy these shortfalls in Schillig. Rookard, Jr. teaches including internal microwave reflective baffles in a microwave transparent survival canteen (Abstract).

It is unreasonable to assert that Rookard, Jr. constitutes analogous art with respect to the subject matter of the pending claims. With reference to MPEP §2141.01(a), the standard for finding a reference to be analogous prior art is that "[i]n order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992).

Canteens cannot reasonably be considered to be within the same field of Applicant's endeavor. In other words, the field of cosmetic applicators is obviously different from that of canteens. This is equally true with respect to the fields of paint sprayers and canteens.

The above-cited MPEP section goes on to quote other Federal Circuit precedent that finds that a reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his or her problem. A survival canteen with radar-reflective baffles cannot reasonably be considered to be matter that would have logically commended itself to the problems confronting Applicant

in designing an improved spray mechanisms for applying substances comprising a cosmetic or a care product.

As such, Rookard Jr. is not analogous art, and is therefore not properly combined with Schillig.

Further, the alleged motivation to combine these references is not one that would have led one of ordinary skill in the art to combine the references in the manner suggested.

The Office Action asserts that it would have been obvious to one of ordinary skill in the art to add the partition of Rookard, Jr.'s canteen reservoir to the paint reservoir of Schillig "in order to prevent uncontrollable sloshing which results in a stable reservoir even when partially full, as taught by Rookard, Jr.." However, contrary to the suggestion in the Office Action, there is no evidence that the paint reservoir of Schillig suffers from "uncontrollable sloshing." Rather, this purported motivation is derived from Rookard, Jr., and deals with canteens worn, presumably, on the hip (*see* col. 1, lines 21-34 of Rookard, Jr.).

Rookard, Jr. discloses a survival canteen comprising internal microwave reflective baffles 6 which divide the canteen into various chambers (*see* Fig. 3 of Rookard, Jr.). The baffles are noted as providing a canteen which can be comfortably worn when partially full and which does not exhibit the undesirable dynamic characteristics caused by undamped sloshing of the liquid contents (*see* col. 2, lines 15-19 of Rookard, Jr.). The type of sloshing caused by wearing a canteen partially filled with water, or other drinkable liquids, does not obviously correspond with any problems suggested by a handheld paint spray gun and paint canister configuration as taught by Schillig.

Moreover, a primary purpose of the microwave reflective baffles in Rookard, Jr. is to enable the canteen to constitute a highly reflective radar target, so that the user may be located if in distress (*see e.g.* claim 1, col. 3, lines 10-23). This also does not obviously correspond to any problem attending the use of a paint spray gun.

Finally, the Office Action that Schillig teaches a substance comprises a cosmetic or a care product because paint is allegedly a cosmetic and a care product. The interpretation is unreasonable at least because the ordinary and customary meaning of a cosmetic and a care product, as used in the context of the pending claims, and as "care product" is defined in paragraph [0067] of Applicant's disclosure, does not include paints as used in a paint spray gun, which is described as used for spray painting objects such as a car door.

In view of the foregoing, one of ordinary skill in the art would not have been motivated to modify the device of Schillig with a partition, such as the radar reflective partition of Rookard, Jr., at least because the references are not analogous art, are not combinable in the manner suggested, and cannot reasonably be considered to have suggested all of the positively recited claim features. As such, the rejection of claim 1, and the claims depending therefrom, necessarily fail.

Regarding claim 20, the Office Action newly applies Krautzberger in combination with Schillig in asserting obviousness of this claim. The Office Action concedes that Schillig does not disclose a housing for receiving a vector gas supply. The Office Action relies on Krautzberger as allegedly disclosing these features. However, Krautzberger only discloses a pipe 6B through which compressed air enters. Pipe 6B is apparently described as "attached on the lower side." These features cannot reasonably be considered to correspond to a housing for receiving a vector gas supply. Moreover, the construction of the Office Action does not comport with the ordinary and customary meanings of the claim terms.

A "housing for receiving" is sufficiently clear to be understood, as used in the context of the pending claims, as the housing at least partially containing the vector gas supply (*see e.g.* paras. [0048], [0054], [0069], [0072]; Fig. 2, Ref. No. 11a). As described in Applicant's specification, providing a housing for receiving the vector gas supply may contribute to the benefits of making the device portable and cordless (*see* para. [0048]). Merely "connecting"

or "attached to" does not satisfy such a feature because "connecting" and "attaching" include joining or fastening that do not suggest any corresponding containing with respect to a specific component. For example, merely because "A is connected to B" gives no indication of how such a connection is established. On the contrary, if "A is received by B", one of ordinary skill in the art would understand this to mean that A is at least partially contained by B.

Regarding claim 21, neither Krautzberger nor Bara teach or suggest at least a spray device for spraying a substance comprising a cosmetic or a care product, as used in the context of the pending claims. Krautzberger discloses an apparatus for spraying colors. Claim 21 recites, a spray device for spraying at least one cosmetic substance contained in a reservoir, the substance being taken from the reservoir by suction created at an outlet orifice of the reservoir by a stream of vector gas, the vector gas being stored in a pressurized receptacle, said device comprising an adjustment valve for adjusting the flow rate of the sprayed substance and a control member capable of being operated by user to act both on a vector gas dispenser valve and on the adjustment valve, the adjustment valve comprising a plunger arranged to cooperate with an associated seat so that the flow rate of the sprayed substance varies with varying spacing between the seat and the plunger, the substance comprising a cosmetic or a care product.

Here again, the Office Action attempts to assert that a substance comprises a cosmetic or a care product because paint is allegedly a cosmetic and a care product. As indicated above, this interpretation is unreasonable at least because the ordinary and customary meaning of a cosmetic and a care product, as used in the context of the pending claims, and as "care product" is defined in paragraph [0067] of Applicant's disclosure, does not include paints as used in a paint spray gun.

Additionally, MPEP §2141.02 states, "[a]scertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art reference as a whole." Further, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983).

The rejection of claim 21 is unreasonable at least because it does not consider the features of the claim in the context of the claim as a whole, and in accordance with the ordinary and customary meaning of the claim terms.

Regarding claim 19, the combination of Schillig and Rookard would not have rendered obvious at least the feature of wherein the first and second compartments are not in communication other than via the substance outlet passage. For example, the allegedly corresponding barriers in Rookard comprise openings 7 between the compartments. Further, no asserted modification of these barriers to remove the opening has been established in the record. Moreover, such a modification would render the barriers unsuitable for their intended purpose by, for example, blocking flow between the upper and lower compartments of the container. Rookard specifically states that the opening 7 and the baffle 6 are made sufficient in size and number to dampen the sloshing of liquid between chambers, while allowing liquid to be drained through the mouth 4 at a rate suitable for drinking. As such, the alleged dampening quality upon which the Office Action relies to combine Rookard with Schillig in the first place, is integrally related to the openings.

These arguments were discussed during the April 9 personal interview. The Examiners agreed that further consideration of the above arguments would be appropriate upon submission of a formal response.

For at least the above reasons, the applied references are not combinable in the manner suggested, and no permissible combination of the applied references can reasonably be considered to have suggested the combinations of features positively recited in claims 1, 19, 20 and 21. Additionally, claims 2-18 and 22-46 would also not have been reasonably suggested by the applied references for at least the respective dependence of these claims, directly or indirectly, on an allowable base claim, as well as for the separately patentable subject matter that each of these claims recites.

Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1-46 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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WPB:JEG/clf

Attachment:

Petition for Extension of Time
Replacement Sheet

Date: May 9, 2008

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